

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2702 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PARESH MAHENDRABHAI VYAS

Versus

STATE OF GUJARAT

Appearance:

MR KG PANDIT for Petitioner

NOTICE SERVED for Respondent No. 1

MR MJ THAKORE for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision:27/11/2000

C.A.V. JUDGEMENT

1. In this petition the petitioner has prayed for issuance of writ of mandamus and/or anyother appropriate writ or direction to the respondent No.2-Project Manager (Hotel Projects), GIIC Ltd, Vadodara and respondent No.3-Managing Director, GIIC Ltd, Ahmedabad to make the appointment of petitioner as a permanent employee as a Technical Assistant as per his representation, dated

27.3.87 and also to declare the petitioner's termination illegal and further to direct the respondents to regularise the petitioner's services from his initial appointment and to give all consequential benefits flowing from said regularisation.

2. The facts giving rise to this petition are that the petitioner has been appointed in Hotel Projects at Baroda which is a consultant agency owned by GIIC. The petitioner was initially appointed as a Junior Engineer with effect from 9.9.1985 on probation on daily wages of Rs.20/-per day in the Hotel Projects under the Scheme of Development of Hotels in the State of Gujarat and thereafter the petitioner was appointed as Technical Assistant (Civil) on consolidated salary of Rs.700/-p.m. from 1.12.1985 for three months and his job was extended by the respondent No.2 upto 31.5.1986 and lastly the services of the petitioner were extended till 31.3.1987. As the petitioner's services were not continued he made representation to the Hon'ble Chief Minister on 15.4.87. In the petition it was alleged that the petitioner's services were not continued from 1.4.87 he made representations to respondents to continue his services from 1.4.87. It has been stated that originally the Hotel project was in Baroda and later on it was shifted from Baroda to Ahmedabad w.e.f.1.4.87.

3. On behalf of respondent No.3, one Mr.K.A.Trivedi, Manager (Law) has filed affidavit in reply wherein it has been stated that the Hotel Project is a Division of GIIC and functions to promote projects in joint sector arrangements. It has been stated that the Hotel project division of GIIC does not have any permanent post or quota post of Technical Assistant (Civil). It has been stated that the Hotel project staff is generally of temporary nature and on completion of any joint sector project, if any position is available in the joint company so floated, the staff can be transferred to such company. It has been stated that no temporary employee of the Hotel project division of the respondent corporation is taken as an employee of the corporation either on adhoc or regular basis after the termination. It has been stated that the Hotel project division is a temporary division only for the purpose of setting up of hotels and other allied projects and is not permanent set up of the corporation. It has been stated that the petitioner has been appointed as Technical Assistant on purely adhoc basis for a specific period and the said position is a work charge position which was not

sanctioned by the corporation. It is denied that the petitioner was on probation on the post of Technical Assistant and he was appointed purely on temporary work charge basis and at no point of time he was a probationer. It stated that as there is no sanctioned post of Technical Assistant in the Hotel project division of the corporation, there was no question of regularising the services of the petitioner. It has been stated that there is no permanent Technical Assistant Post in the Hotel Project Division of the corporation and there is no question of appointing anyother person on the said post in place of petitioner. The petitioner has filed rejoinder denying all the said contentions. The respondents had filed further affidavit in reply dated 14.9.88 in which it was stated that the Hotel Project was a part of the Corporation on temporary basis and it has been closed down and the staff being on temporary basis have been relieved. It has been stated that the Hotel project cell was a temporary cell only created for the purpose of setting up of hotels and other allied projects. In the circumstances the Corporation decided to close down the Hotel project cell and the Project Manager who was employed on contract service has been relieved on expiry of his contract on 31.3.1988 and other employees were also relieved from service. It was therefore stated that the petitioner has no right to continue on the said post. Mrs.Megha Jani who had appeared on behalf of the GIIC has submitted that the project has been closed down and therefore the petitioner has no right to continue on the said post.

3:1 The learned counsel for the respondent nos.2, 3 and 4 has cited decision of the Supreme Court, in the case of STATE OF HARYANA V/s. SHRI DES RAJ SANGAR AND ANOTHER, RAJENDRA SAREEN, reported in 1976 (2) S.C. 844. In para-(7), the Supreme Court has observed as under :-

Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post.

3:2 The learned counsel for the respondents has relied upon the judgment, in the case of M. RAMANATHA PILLAI V/s. STATE OF KERALA, reported in 1972 (2) SCC 657 : SCC 576. The Supreme Court has observed as under:-

The abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the eproposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an a executive policy decision. Whether after abolition of the post, the government servant who was holding the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post.

3:3 The learned counsel for the respondents has also relied upon the judgment in the case of SHRI MAHESHWARI SENIOR HIGHER SECONDARY SCHOOL AND ANOTHER V/s. BHIKHA RAM SHARMA AND OTHERS, reported in (199) 8 Supreme Court Cases 22, wherein the Supreme Court has observed as under:-

It is settled law that on abolition of the post, the existing holder of the post ceases sto continue from the date of abolition of the post. Siknce the termination of the service of the respondent is only due to abolition of the post, the question of conducting the enquiry under the Rules does not arise.

4. I am of the view that when the post of the petitioner was on adhoc and temporary basis and there was no proper sanctioned post and when the Hotel project itself was closed down the petitioner has no right to continue on the said post. Therefore, the petition is dismissed. Rule is discharged. No order as to costs.